App. E. IX-4

9-30

192~~8~~7 (Law)

File No. 23-29

Serial Nos.

Law 30-39-2-5 2 11 12

*Previous Reference*

L. R. 39-29
L.R. 82-26-(1-5)
LR. 175-28-(1-9)

~~Later References~~

L.R. 319-25-(17)
Law 5-28-(13&14)
L.R. 319-25-(15 7)
Later References

Law Dept 65-31

preserve
M
8/11/42

# General and Revenue Secretariat.

*Serial Nos.*

**Part B for** January 1930

**SUBJECT**

Mr K. N. Sivaraman's notice;
Suit against Govt. re. Survey no 60 of
Banavadi village Magadi taluk

G.R.S. 11j

GENERAL AND REVENUE SECRETARIAT.

NOTES.

File No. 110-2

FILE HEADING.

Notice of suit against Govt

Notice No. Dated 6-6-29 received

Diary No. 6858 | Enclos. | Spare Copies | Serial No. 17

BRIEF ABSTRACT OF LETTER.

Notice of suit against Govt regarding Banavadi village Mandya Tk

NOTES AND ORDERS.

previous files dd 175-28-9 and dd 82-26-5 be placed below facts of the case are given in G O of 10-5-29 which was passed after hearing both the parties. Submit for orders whether the Legal Remembrancer may be consulted.

(dd 175-28-9)

NOTES—First sheet TLN 19/6

2) G. Secy
Please
for
Legal Remembrancer
28/6/29
21/6/29

G.P.S.—15,000—24-4-08

3 The facts of the case are briefly as follows:--

The petitioner Gundabhatta gave a darkhast on 23-10-1920 for the assessed waste land Survey No.60 in Banavadi village, Magadi Taluk. On 12-12-1922, the Sub Division officer granted the land to him for an upset price of Rs.41 T Baguvali chit was granted on 15th March 1923. when he was also put in possession of the land.

4 On 16th January 1923, one Nanjappa approached the Deputy Commissioner, stating that the land was fraudulently got for a low value and offered to purchase the [illegible] Rs.500. The Deputy Commissioner thereupon set aside the grant, but on appeal the Revenue Commissioner held that since the grant was regular under the rules, it could not be cancelled unless the allegations of fraud &c. made by Nanjappa were proved and therefore ordered an enquiry. After a full enquiry by the Sub Division officer, the Deputy Commissioner found that there was no fraud and consequently confirmed the grant to Gundabhatta. The appeals

ıen Legal Remembrancer was consulted and
ined that since the Darkhastdar was not
ilty of any fraud, the grant to him could
lawfully revoked. He however added that
vernment had discretion to set aside the
ant (Flag H). No notice was given to
ndabhatta and without his being heard, an
der (Flag Z) dated 9th February 1928 was
ssed directing the Revenue Commissioner t
x a suitable higher price for the land and
ask the grantee, Gundabhatta to pay up t
balance due and that in case he failed to d
so, the land might be put to auction.

6 The Revenue authorities then served Gundabhatta with a notice demanding payment of Rs.512-8-0 and he thereupon petitioned Gove-- ment for reconsideration of the adverse ord passed against him exparte. On this, notic was issued to Nanjappa and both the parties were heard but Government declined on 10th May 1929 to revise the orders passed on 9th February 1928 (Flag D).

Gundabhatta now gives notice under S tion 80 C.P.C., threatening a suit against Government for declaration of his non-liabi to pay the amount demanded and for an injun restraining the Government from interfering with his possession.

8 The first point that is to be consider is whether the threatened suit is maintainabl Section 221 (f) of the Land Revenue Code

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outs the jurisdiction of Civil Courts in the matter of claims against Government respecting the occupation of waste or vacant land belonging to Government. The term "occupation" has been held to mean "occupancy" or "possession" (14 M.C.C.R. 255). Hence Civil Courts have no jurisdiction to entertain suits regarding possession of waste or vacant lands belonging to Government. If however the plaintiff can show that at the time of suit, the land in question did not lawfully belong to Government but that he had acquired a legal title to it, his suit cannot be thrown out as being barred under Section 221 Cl(f) of the Land Revenue Code.

9 This leads to the important question as to when a grantee of a waste or vacant land acquires legal title to the land. Under Section 36, the Deputy Commissioner subject to the orders of the Revenue Commissioner has ~~xxx~~ been empowered to dispose of all lands wherever situate and belonging to Government and he has to do this in such manner as may be authorised by the General Rules sanctioned by Government. Under Section 58 of the Land Revenue Code, before a person takes up an occupied land, he has to obtain the permission of the Amildar and under Section 60 the Deputy Commissioner is authorised to fix prices for the occupancy or to sell them by auction. The sale of unoccupied land under Section 60 or

Contn. Sheet

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the permission to occupy such land given under section 58 are both within the scope of of the revisional powers of Government under Section 217 (Parappa v Secretary of State 189 Bombay P.J. page 230) and therefore it can be said that the grantee cannot acquire a legal title unless the orders of the Deputy Commissioner have become final either by confirmation of the same by Government or by lapse of the prescribed time for appeal or revision. Once such an order has become final it cannot be set aside by Government. It is significant to note that the Land Revenue Code does not give the Revenue Courts or the Government any power of reviewing its own orders, just as in the case of Civil Courts. Hence if at all a review is permitted, it must be in the exercise of the inherent power of a Court to correct illegalities or errors apparent on the face of the record. It therefore follows that a grantee of an occupancy acquires a valid title to the land as soon as the grant has been confirmed by the highest authority an and not afterwards set aside by such authority in the exercise of its inherent powers of review.

10 In this case, the Government finally confirmed the grant to Gundabhatta by its order dated 6th April 1926 (Flag O) Since the review petition presented by Nanjappa afterwards disclosed no such error or mistake

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as could call in for the exercise of the inherent power of review, it is submitted that it was not open to the Government to revise the orders already passed which gave a valid title to the land to Gundabhatta.

11 The case in 14 M.C.C.R. page 255 might at first seem to bar such a suit, but it is distinguishable from the facts of this case, since there the order of the Amildar under which the plaintiff claimed had been set aside by a competent appellate authority (ibid page 257).

The case (O.S.1 of 28-29 District Court, Mysore decided by Mr. K.Shankaranarayana Rao, District Judge, is also different from the present in that the Government finally in appeal from the Revenue Commissioner's order set aside the grant to plaintiff.

13
14

12 It follows therefore that a suit by Gundabhatta for possession of the land is maintainable and it is for orders whether the threatened suit is to be awaited and defended or suitable steps be taken to avoid the litigation.

DMP
22.8.29



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In my opinion ~~this~~ this appears to be a ~~ca~~ case of great hardship. It will be seen from the records that Saguvali chit was issued to the party and he was also put in possession of the land on 15th March 1923. On the objection petition preferred by Nanjappa the Deputy Commissioner cancelled the grant and the Revenue Commissioner -- ordered an enquiry. After such enquiry it was found that the party was not guilty of any fraud, and the Deputy Commissioner confirmed the grant in 1924. On 27-8-1925 the Revenue Commissioner also confirmed it, and the Government finally confirmed the grant on 6th April 1926. It has to be added that while confirming the grant on 6th April 1926, Government observed that it was not proper to deprive the party of possession of the land after three years unless there was clear proof of fraud against him. Government also observe regarding the question of fraud that as both the Deputy Commissioner and the Revenue Commissioner considered that there was no proof of fraud there was no reason for interference.

2. (14) It is therefore clear that there was a concurrent finding by both the Deputy Commissioner and the Revenue Commissioner on the question of ~~fr~~ fraud and the Government declined to interfere. Besides, para 2 of Sec..210 of the Revenue Code expressly provides that ~~there~~ no appeal shall lie to Government from an appellate decision or order passed by the Revenue Commissioner except on a

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point of law or usage having the force of.law. There was no point of law involved in the case and on point of fact also the appellant had no case. But on a review petition filed by the - appellant the Government reversed the decision of 4-4-1926 on the ground that the upset price was unduly low and directed that Gunda Bhatta should be called upon to pay a suitable higher value within the stipulated time and that the land should be sold by auction in case of his failure to do so (Vide G.O. dated 9th February 1928). Gunda Bhatta filed another review,,but it was rejected by Govern ment on 10-5-1929. The Amildar has now issued a notice to Gunda Bhatta requiring him to pay - - - Rs.512-8-0 and has intimated that the land will be sold by public auction in case of his default.

(LR 82-26-3)
(LR 175-28-9)

3. 15) With respect to the G.O. of 9th February 1928 the following points seem to arise for consideration:--

(a) The decision of Government dated 6-4-26 was final under the Revenue law. No review lies against such an order, and the Revenue Code contains no provision for a Review.

(b) Before the order of 6-4-1926 was set aside on the ground of review in 1928, no notice was issued to Gunda Bhatta and he was not given an opportunity of being heard.

(c) Under the Civil Procedure Code, the chief

ground for granting a review is the discovery of new and important matter. In this case no new ground was urged or discovered to support the review.

(d) On the important question of fraud the G.O. of 1928 contains no finding and there is nothing to show that they differed ~~in the order of 1926~~ from their own finding in the order of 1926 on the said question.

4. 16) All these points will arise for decision in the Civil Court, on the institution of a suit by Gunda Bhatta and there is every reason to believe that the decision of the Civil Court will be adverse to Government on all the above points. It is true that under Section 221(b) of the Revenue Code, Civil Courts have no jurisdiction to entertain suits falling under the said section. The words used in Cl.(4) of the said section are:--

"respecting the occupation of waste or vacant land belonging to Government"

The words "belonging to Government" are important Since the land has been put in possession of Gunda Bhatta and the sale thereof confirmed by the highest authority viz., the Government, he must deemed to have acquired a valid right. The order of Government dated 6th April 1926 was final and cannot be set aside, and it is open to doubt whether the subsequent order can be said to be in order, especially in the absence of a provision in the Revenue Code authorising a review. At any rate,

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since ownership and possession are with Gunda Bhatta, it may be more appropriate to allege that the land "belonged to him," and not to Government at the time of suit when it is filed. Again, the decision reported in 14 Mys. C.C.R.p.255 may be distinguished, since the title has been confirmed by the highest authority in this case, unlike the above decision. In this view of the case, the Civil Court may entertain the contemplated suit against Government.

5. 17) In the case reported in 22 Mys. C.C.R. p.277 (Murthy Rao ... Government of Mysore), it has been held that the Courts in Mysore have jurisdiction to decide whether an act of the Government which purports to be done under the warrant of an enactment is or is not warranted by that enactment and if it is not so warranted to make a declaration to that effect. If in the present case, the Amildar puts up the land to auction as he proposes to do, and possesion passes to the purchaser as a result of the said auction, Gundabhatta will have a just cause of action to sue the Government in the Civil Court under Section 2 of the Regulation providing for suits against Government (VII of 1923) also, and it seems difficult to say what chances the Government will have to resist such a suit.

6. 18) Under the circumstances, the proper course seems to be to drop further proceedings in the

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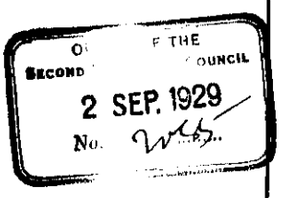


matter and to allow Gunda Bhatta to continue to remain in possession of the land.

P. M. 31/8/29

Agreed with Secy

Sd. 31/8

Second member

I am unable to agree with the view taken by the L.R. I do think that the proper course is to Cancel the Govt. Order dated 9th Feb 28 and subsequent orders. But please submit to 1st & 3rd members who who passed orders in the latest Review petn.

CSG 2/9/29

Sd. 3/9

First member

Third member.

An order has been passed and affirmed. It does not appear to me to be desirable to Cancel it.

Mudie 10.9.29

The Late Legal Remembrancer 17.1.28 said that although no land was forfeited against the darkhastdar he had discretion to set aside the grant. The question now expressed is that he had no power to do so.

I agree with the First Member that an order having been passed and affirmed it is not

17.7.29 view put up by Gunda-tha was rejected vide note 4 bb of dR 39-29-2 fl. 9. below

2 (dR 82-26-5)

2 (dR 175-28-9)

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to allow the matter to take its course and to cancel the order

11.9.29

Second member

11.9.

OF THE OF COUNCIL

Seen

12/9 13/9